

C O P Y

*in opinion*

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March 6, 1937

Mr. Roy Y. Lang  
Director of Personnel  
State House  
Concord, New Hampshire

Dear Mr. Lang:

In a recent conversation you recalled that some time ago I had made some observations concerning the fact that the Personnel Commission is without statutory authority to compel the attendance of witnesses in proceedings before it, and you asked if I still entertain the same views.

My answer is yes - in my opinion the Commission may be seriously impeded in the performance of its functions by the lack of authority to subpoena witnesses, and it ought to be provided with such authority.

In RSA 98 the Commission is charged with a number of duties which require the finding of facts. It is sufficient to allude only to paragraphs I and II of RSA 98:8 to indicate the breadth of the Commission's proper scope of inquiry with respect to the service rendered to the State by its agents and servants. The duty to make inquiry of such vital public concern ought to be accompanied by all powers reasonably necessary to its performance, and one such power is the authority to compel the attendance of witnesses.

It was with respect to the statutory duty of the Commission set forth in RSA 98:15 that the absence of the power to subpoena witnesses first came to my attention; and while it is at least highly desirable that the power be provided for all of its proceedings, it is essential that the Commission have it when acting under section 15. The section requires the Commission to pass on the legality of the dismissal, demotion or suspension of a public employee - subject to an appeal to the Supreme Court. The importance of this duty, both to the State and to its employee, is evident without comment.

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ATTORNEY-GENERAL

Mr. Roy Y. Lang

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In the performance of this function it is most essential that the Commission have full access to all evidentiary matters bearing upon the case. Having in mind the importance of the issues involved - both public and private - it is absurd that the Commission should be compelled to rely upon the voluntary appearance of persons having knowledge of pertinent facts. The reluctance of individuals to testify to matters which may adversely affect the rights of others is well known. It constitutes an understandable human trait. But it represents a serious bar to the ascertaining of the facts of a case unless the body charged with finding the facts has available to it the device of the subpoena.

In summary, then, the Commission ought to have the subpoena available to it in all of its proceedings under the statute. It is essential that it have such power with respect to proceedings had under RSA 98:15.

Very truly yours,

Warren E. Waters  
Deputy Attorney General

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